IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 82 OF 2007.

Mr. Ronny Colaco,
43 years of age, married,
resident of Orulem,
Vasco-da-Gama, Goa. .... Petitioner.

Versus

1. Communidade of Mormugao,
   through its Attorney,
   Mr. Leonard Rodrigues,
   Vasco-da-gama, Goa.

2. The Adminsitrator of Communidades
   of South Goa, with its office
   at Communidade Building,
   Margao, Goa.

3. Mr. Leonard Rodrigues,
   70 years of age, married,
   Attorney of the Communidade of
   Mormugao, with his office at
   Communidade of Mormugao,
   Vasco-da-Gama, Goa.

4. The Administrative Tribunal of Goa,
   Through its President, having
   his office on 3rd Floor,
   Vaidhya Hospital Building,
   Panaji, Goa.

5. Shri Walter Rodrigues,
   Mamlardar, Mormugao Taluka,
   with his office at Vasco-da-Gama,
   Vasco-da-Gama, Goa. .... Respondents.

Mr. M.S. Usgaoncar, Amicus Curiae.

Mr. V.P. Thali, Advocate for the Petitioner.

Mrs. Harsha Naik, Advocate for the Respondents No.1 and 3.

Mr. C.A. Coutinho, Advocate for the Respondent No.2.

CORAM: S. A. BOBDE, J.

DATE: 12th APRIL, 2007.

ORAL JUDGMENT:

Rule. Rule returnable forthwith. Heard by consent.

2. By this petition, the petitioner seeks a writ of certiorari to set aside the Order dated 29.01.2007 passed by the respondent No.4 the Administrative Tribunal in Communidade Appeal No.21/06 to the extent that the Tribunal did not declare the petitioner as elected to the post of Attorney of the said Communidade after setting aside the election of the elected candidate for the triennium 2007-2010. The Tribunal has directed that a General Body of the Communidade be convened for conducting a fresh election of Attorney within 45 days of the receipt of the Order. The relevant facts are these :-

The petitioner and the respondent No.3 contested the elections for the post of Attorney of the Communnidade of Mormugao in the elections held on 3.12.2006. There were no other candidates. Upon the election of the third respondent, the petitioner challenged his election on the ground that the respondent No.3 was ineligible for being chosen as a member of the Administrative Board of the Commundiade for the triennium 2007-2010 since he had already served as a Member of the Administrative Board, that is as an Attorney during the earlier term 2004-2007. The petitioner pleaded a bar to that effect contained in Article 50 of the Code

of Comunidade.

The Tribunal agreed with the petitioner and set aside the election of the third respondent. It however refused to declare the petitioner as elected. Hence this petition.

3. Mr. Thali, the learned counsel for the petitioner contended that since there were two candidates only and the respondent No.3 having been disqualified, the Tribunal was bound to declare the petitioner elected in his place instead of ordering a fresh election.

4. Mr. Coutinho, learned Counsel for the Respondent No2, submitted that the Administrative Tribunal has no power to declare another candidate as elected, either under the Code of Communidade which is the law governing the Communidades or the Goa Administrative Tribunal Act, 1965 under which the Administrative Tribunals are constituted.

5. Since the matter involved a question of interpretation of some provisions of the Reforma Administrativa Ultramarina i.e. Overseas Administrative Regulations framed by the Government of Portugal, I requested Mr. Usgaonkar, the learned Senior Counsel to throw light on the subject, which he has done.

6. Whatever be the position of the contending parties, the question whether the Administrative Tribunal has the power to

declare another candidate elected, upon setting aside an election, must be answered in terms of the law constituting the Tribunal and conferring powers on it.

7. The Administrative Tribunal, formerly known as the Tribunal Administrativa appears to have been constituted by the Government of Portugal under its Overseas Administrative Regulations. After the liberation of Goa, its existence and powers were continued and modified by the Goa Administrative Tribunal Act, 1965. [Under the Code of Communidades, the power to decide an election dispute arising out of elections to the Communidade is vested in the Tribunal vide Article 49]. The Tribunal has the power to decide matters arising out of several laws against decisions and orders of various kind such as :-

" (a) of the administrators of concelhos;

(b) of the administrators of comunidades;

© of the administrators of Municipalities or other autonomous bodies; and

(d) in election matters pertaining to Municipalities or other local authorities. "

of Section 6 of the Goa Administrative Tribunal Act, 1965. The provisions relevant to the issue before this Court are as follows :-

" *6. Jurisdiction of Tribunal.* - The Tribunal shall have all such jurisdiction as was exercisable by the Tribunal Administrative in relation to appeals against decisions and orders -

(a) of the administrators of concelhos;

(b) of the administrators of comunidades;

© of the administrators of Municipalities or other autonomous bodies; and

(d) in election matters pertaining to Municipalities or other local authorities

in respect of which appeals to the said Tribunal were allowed under any law in force immediately before the 19th December 1961.

Provided that if the jurisdiction in relation to any matter specified above is conferred upon any other tribunal court or other authority by or under any other law for the time being in force, the Tribunal shall not exercise such jurisdiction.

Explanation.- The reference to the administrator in this section shall be construed as a reference also to any other authority with a different designation which

exercises functions of, or corresponding to, those of the administrator under the relevant law.

(2) The Tribunal shall also have jurisdiction in relation to any other matter if such jurisdiction is conferred by or under any Act of the Legislature of the State of Goa.

(3) The Tribunal shall have, no jurisdiction in any matter which is pending in a court of law or which, in its opinion, involves a question as to the validity of any enactment for the time being in force. “

Article 49 of the Code of Communidades confers powers in the following terms on the Administrative Tribunal :-

“ Art.49. In case of irregularities in the election, any component of the Comunidade with right of voting may appeal to the Administrative Tribunal within 5 days, it being allowed the use of ordinary paper for all proceedings.

$ Only. The Administrative Tribunal shall decide the appeal

> within 8 days, and, in case the election is annulled, the Comunidade [or the twenty major components] shall be convened once again according to formalities contained in Art. 47, in order to arrange for the new election in accordance with the judgment of the Tribunal. "

7. Disputes pertaining to elections were decided by the Tribunal Administrative under Reforma Administrativa Ultramarina. Thereafter the jurisdiction to decide such disputes was continued by Section 6 of the Administrative Tribunal Act 1965 and conferred on the Administrative Tribunal. Similarly Art.49 of the Code of Commundiades conferred a right of appeal to the Tribunal in case of any irregularity in the election. As observed earlier, the question that arises in this case is whether in addition to annulling an election, the Tribunal has the power to declare another candidate as duly elected. The sole paragraph ($) to Article 49 of the Code of Comunidade provides for the consequence of annulment of an election by the Tribunal and that is that "the Comunidade shall be convened once again according to formalities contained in Article 47 in order to arrange for the new election in accordance with the judgment of the Tribunal ". In other words, the only consequence provided upon annulment of the election is that the Communidade shall be convened for holding fresh elections in accordance with the judgment of the Tribunal.

There is thus no scope, on a plain reading of Article 49, for the contention that the Tribunal may, in addition to annulling the election of the returned candidate, declare some other candidate as elected and thereby prevent the holding of fresh elections.

8. Mr. Thali, the learned counsel for the petitioner, however, submitted that there is such a power under the Overseas Administrative Regulations. According to the learned counsel, the powers of the Tribunal Administrative are saved by the opening words of Section 6 of the Goa Administrative Tribunal Act: " The Tribunal shall have all such jurisdiction as was exercisable by the Tribunal Administrative in relation to appeals against decisions and orders ". According to the learned counsel the Tribunal Administrative had, such a power, though conferred impliedly falling under the Reforma Administrativa Ultramarina i.e. the Overseas Administrative Regulation in relation to an election petition, by virtue of Article 716; which reads as follows :-

> " Art.716.o As decisoes do tribunal designarao individualmente todos os cidadaos votados e o numero dos votos obtidos; concluirao sempre por declarar valida ou nula a eleicao does candidatos eleitos ou por declarar a necessidade da repeticao dos actos eleitorais em alguma ou em todas as assembleas. "

English Translation:

> The decisions of the Tribunal shall indicate the citizens in whose favour votes have been cast, and number of votes secured by each of them; they will always declare valid or declare null and void the election of the elected candidates or declare the necessity of holding fresh election of some or all the assemblies.

9. The submission is that the power to declare another candidate elected is impliedly conferred while conferring the power to declare the necessity of holding fresh elections of some or all the assemblies vide Article 716. Alternatively, it is incidental to the power to declare the necessity of holding fresh elections. A plain reading of the Article does not show that even the Tribunal Administrative was conferred with the power to declare another candidate as being elected after declaring null and void the election of the elected candidate. It is not possible to accept the contention on behalf of the petitioner that the power to declare another candidate as elected is implicit within the power to declare the necessity of holding fresh elections of some or of the assemblies. It is not possible to infer from this last mentioned power, the power to declare another candidate as duly elected. The said power can perfectly exist with a purpose without compelling the inference of an implied power to declare a particular candidate elected if the election of a returned candidate is set aside. The power to declare the necessity of holding fresh elections of some or of assemblies has been conferred to deal with variety of circumstances which may be dealt with by the Tribunal such as the

illegalities effecting the entire election or a part of the election. In any case, I am of view that the existence of such a power does not lead to the inference that there is an implied power to declare a candidate other than the elected candidate as duly elected if the election is set aside. Such a power to declare another candidate as elected is a specific power which might be considered to be a power to substitute the voters choice of who their representative should be and must be specifically conferred expressly and clearly. For example, such a power has been specifically conferred on the High Court under Section 102 of the Representation of the People Act, 1951 which reads as follows :-

> " **102. Procedure in case of an equality of votes.** - If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then -
> (a) any decision made by the returning officer under the provisions of this Act shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and
> **(b)** in so far as that question is not determined by such a decision [the High Court] shall

> decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote. "

10. The power to declare another candidate elected is also not incidental to the power to declare the necessity of holding a fresh election. The two powers are independent in intent and purpose. The power sought to be inferred must be absolutely necessary for the exercise of the power expressly conferred, which is not the case here. In any case, I am of view that Article 49 of the Code of Comunidade which was enacted in 1961 by Legislative Diploma No.2070 specifically deals with the consequences of annulment of an election and provides that in such an eventuality the Comunidade must be convened once again for holding a new election. There is no other provision in any other law which provides for an alternate consequence. Thus, even if Article 716 is held to be attracted for the purpose of deciding the scope of the power of the Tribunal while dealing with an election dispute, the question whether the Tribunal has the power to declare another candidate elected or must invariably direct a fresh election, must be determined by the special provision, Article 49 and Article 716 may be allowed to operate only in areas where the Code of Communidades makes no provision.

11. In this view of the matter, it is not possible to accept the petitioner's contention that he was entitled to be declared elected upon the annulment of the election of the returned candidate and that the Tribunal

committed an error of law in not doing so. In my view, the Tribunal's order directing fresh elections to be held is perfectly justified.

12. In the circumstances, there is no merit in the petitioner's prayer that a writ of mandamus be issued to direct the respondent No.5-Mamlatdar-Returning Officer to treat the petitioner as duly elected.

The Court expresses its appreciation to Mr. Usgaonkar for having assisted the Court as Amicus Curiae.

Petition is dismissed. Rule discharged. Misc. Civil Application No.216/2007 stands disposed of accordingly.

S. A. BOBDE, J.

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